



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of
GROVE FARM COMPANY,
INCORPORATED
For A Declaratory Order To Designate
Important Agricultural Lands
For Approximately 11,026.2 Acres
At Hā`upu and Līhu`e, Kaua`i, Hawai`i

) DOCKET NO. DR12-48
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION AND ORDER

2013 FEB 25 A 11:51
LAND USE COMMISSION
STATE OF HAWAII

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER
AND
CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct copy of
the document on file in the office of the State Land
Use Commission, Honolulu, Hawai`i.

February 25, 2013 by

Executive Officer



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**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER**

GROVE FARM COMPANY, INCORPORATED (“Petitioner”), filed a Petition for Declaratory Order to Designate Important Agricultural Lands (“Petition”) on November 30, 2012, pursuant to Hawai`i Revised Statutes (“HRS”) §§205-44 and 45, and Hawai`i Administrative Rules (“HAR”) chapter 15-15, to designate as Important Agricultural Lands (“IAL”) approximately 11,026.2 acres of land, situated at Hā`upu and Līhu`e, Kaua`i, Hawai`i, Tax Map Key Nos. 2-8-01: 01 (por.); 2-8-02: 01 (por.); 3-4-01: 01 (por.), 02 (por.), 03 (por.); 3-4-05: 03 (por.), 04 (por.), and 13; 3-8-01: 01 (por.); and 3-8-02: 02 (por.) (collectively “Petition Area”).

The State of Hawai`i Land Use Commission (“Commission”), having heard and examined the testimony, evidence, and argument of counsel presented during the hearing, along

with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 30, 2012, the Petitioner filed its Petition and Exhibits “A” through “F” of the Petition.
2. On December 3, 2012, the Commission mailed letters to the State of Hawai‘i Office of Planning (“OP”), the State of Hawai‘i Department of Agriculture (“DOA”), and the Kaua‘i County Planning Department (“County”), requesting comments on the Petition.
3. On December 3, 2012, the Petitioner filed a compact disk (“CD”) containing digital files of the Petition.
4. On January 9, 2013, the Petitioner filed a Revised Exhibit “D-2”.
5. On January 11, 2013, DOA and OP requested, via electronic mail, additional time in which to file comments, until January 17, 2013. The Executive Officer acknowledged extending the comment response deadline.
6. On January 17, 2013, the Commission received electronic mail from the County containing a comment letter from Michael Dahilig, Planning Director.
7. On January 17, 2013, OP filed comments on the Petition. OP’s comments included comments on the Petition from the Natural Resources and Conservation Services (“NRCS”), United States Department of Agriculture, dated January 4, 2013; the State of Hawai‘i Energy Office dated January 7, 2013; and the University of Hawai‘i at

Mānoa, College of Tropical Agriculture and Human Resources (“CTAHR”), dated January 14, 2013.

8. On January 22, 2013, DOA filed comments on the Petition.

9. On January 30, 2013, the Commission sent its Notice of Hearing and Agenda for its February 7-8, 2013, meeting to all Parties and the Commission’s Statewide, Maui, and Kaua`i mailing lists.

10. On February 1, 2013, the Petitioner filed its response to comments on the Petition received by the Commission from OP, DOA, and the County.

11. On February 8, 2013, the Commission held a site visit to view the Petition Area in Hā`upu and Līhu`e, Kaua`i, Hawai`i.

12. On February 8, 2013, the Commission held an action meeting on the Petition in Līhu`e, Kaua`i, Hawai`i. Curtis T. Tabata, Esq., Benjamin M. Matsubara, Esq., and Michael Tressler appeared on behalf of Petitioner. Bryan Yee, Esq., Jesse Souki, and Rodney Funakoshi appeared on behalf of OP. Mauna Kea Trask, Esq., and Michael Dahilig appeared on behalf of the County Planning Department.¹

13. The Commission entered, without objection, the written comments of OP, the DOA, the County, and Petitioner’s response thereto. There was no public testimony.

14. On February 13, 2013, the Commission received written correspondence from Kaua`i Economic Development Board, Inc.

DESCRIPTION OF PETITION AREA

¹ At the meeting, Acting Chair Heller disclosed that his law practice has provided legal services to the County of Kaua`i, but that he was not aware of what the details of the involvement was. Mr. Mauna Kea Trask, Deputy Corporation Counsel for the County, noted that he was not involved in those cases. There were no objections by Petitioner, OP, or the County to Commissioner Heller’s or Mr. Trask’s participation in this docket.

15. The Petition Area consists of approximately 11,026.2 acres of land, situated at Hā`upu and Līhu`e, Kaua`i, Hawai`i, Tax Map Key Nos. 2-8-01: 01 (por.); 2-8-02: 01 (por.); 3-4-01: 01 (por.), 02 (por.), 03 (por.); 3-4-05: 03 (por.), 04 (por.), and 13; 3-8-01: 01 (por.); and 3-8-02: 02 (por.).

16. The description of the Petition Area acreage by Tax Map Key Numbers and Tax Maps depicting the Petition Area is shown in Petitioner's Exhibits "B" and "D", which are attached hereto and incorporated herein by reference as Exhibit "1."

17. The Līhu`e Petition Area is owned in fee simple interest by Petitioner, and the Hā`upu Petition Area is owned by Hā`upu Land Company LLC.

18. Hā`upu Land Company LLC is the owner of the fee simple interest in the Hā`upu Petition Area and has given its written consent to the filing of the Petition and the designation of the Hā`upu Petition Area as IAL.

DESCRIPTION OF REQUEST

19. Petitioner seeks a determination from the Commission that the lands identified by Petitioner in this Petition should be designated as IAL pursuant to HRS §§ 205-44 and 45.

20. Petitioner's position is that the Petition Area meets the qualifications for designation as IAL under HRS §205-44, meets the purpose of Article XI, Section 3, of the Hawai`i State Constitution and the objectives and policies for IAL in HRS §§ 205-42 and 205-43, and that the Commission should issue a declaratory order designating the Petition Area as IAL pursuant to HRS §205-45.

21. Petitioner is not seeking to reclassify any agricultural lands to the State Land Use Urban, Rural or Conservation Districts.

22. Petitioner has represented that it is not claiming and will not claim any credits described in HRS §205-45(h).

CONFORMANCE WITH THE STANDARDS AND CRITERIA
FOR THE IDENTIFICATION OF IAL

22. Approximately 6,000 acres of the Līhu`e Petition Area is in active agricultural production, including cattle ranching, biomass, diversified agriculture, and livestock.

23. Approximately 285 acres of the Hā`upu Petition Area is in active cattle ranching.

24. Approximately 9,890 acres of the Līhu`e Petition Area is subject to a lease option with Hawai`i BioEnergy LLC for growing bioenergy crops, including trees and grasses.

25. The Līhu`e Petition Area soils do have good physical properties and with proper fertilization can be productive for a wide range of crops, are suitable for producing a wide range of tree crops, pasture, vegetables and fruits and can be managed to produce many agricultural products sustainably.

26. The Līhu`e Petition Area has soil qualities and growing conditions suitable for the cultivation of trees and grasses which are strong candidates for energy crops for sugar and fiber production.

27. In 1977, the State Department of Agriculture developed a classification system to identify Agricultural Lands of Importance to the State of Hawai`i (“ALISH”). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three (3) classes of ALISH lands are: “Prime,” “Unique,” and “Other,” with all remaining lands termed “Unclassified.” When utilized with modern farming methods, “Prime” agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically.

“Unique” agricultural lands possess a combination of soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. “Other” agricultural lands include those that have not been rated as “Prime” or “Unique.” The ALISH system classifies approximately 41.4% of the non-reservoir Hā`upu Petition Area as “Prime,” 33.6% of the non-reservoir Hā`upu Petition Area as “Other,” and the balance is “Unclassified.”

28. The Petition Area has access to irrigation water, including on-site and off-site water sources and water transmission distribution systems. In addition, the Līhu`e Petition Area receives between 60 to 100 inches of rainfall annually and is adequate for rain-fed production of many crops.

29. The Petition Area’s agricultural classification is consistent with the General Plan of the County of Kaua`i.

30. The Petition Area is situated within the State Land Use Agricultural District.

31. The Petition Area contributes to maintaining a critical land mass important to agricultural operating productivity.

32. The Petition Area is fully integrated with the infrastructure necessary to support agricultural production, including roads, gates, reservoirs, ditches and streams. Located within the Hā`upu Petition Area is Waitā Reservoir which covers 415 acres and has a capacity of 2.3 billion gallons of irrigation water. Waitā Reservoir is the largest body of inland water in the State of Hawai`i and irrigates 3,700 acres of agricultural lands, including 1,533 acres of IAL in Māhā`ulepū.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Petition pursuant to HRS §§ 91-8, 205-44, and 205-45 and HAR §15-15-98.
2. Pursuant to HRS §205-44(a), the Commission has the authority to designate lands as IAL so long as any of the criteria in HRS §205-44(c) are met.
3. The Petition Area is currently used for agricultural production in accordance with HRS §205-44(c)(1).
4. The Petition Area has soil qualities and growing conditions that support agricultural production in accordance with HRS §205-44(c)(2).
5. The Petition Area constitutes lands identified under agricultural productivity rating systems, such as the ALISH system adopted by the Board of Agriculture on January 28, 1977, in accordance with HRS §205-44(c)(3).
6. The Petition Area includes traditional Native Hawaiian agricultural uses such as taro cultivation in accordance with HRS §205-44(c)(4).
7. The Petition Area has sufficient quantities of water to support viable agricultural production in accordance with HRS §205-44(c)(5).
8. The Petition Area's designation as IAL is consistent with the General Plan of the County in accordance with HRS §205-44(c)(6).
9. The Petition Area contributes to maintaining a critical land mass that is important to agricultural operating productivity in accordance with HRS §205-44(c)(7).
10. The Petition Area is within close proximity to or is near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power in accordance with HRS § 205-44(c)(8).

11. The designation of the Petition Area as IAL meets the purposes of Article XI, Section 3, of the Hawai'i State Constitution by conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands.

12. The designation of the Petition Area as IAL meets the objectives of HRS §205-42(b) by contributing to the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.

13. The designation of the Petition Area as IAL meets the policies of HRS §205-43(1) by promoting the retention of IAL in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management.

14. The designation of the Petition Area as important agricultural lands meet the policies of HRS § 205-43(2) by discouraging the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses.

15. The designation of the Petition Area as important agricultural lands meet the policies of HRS § 205-43(8) by promoting the maintenance of essential agricultural infrastructure systems, including irrigation systems.

16. The Petition Area meets the requirements of HRS §205-45 for designation as IAL.

17. Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

DECISION AND ORDER

This Commission, having duly considered the Petition, the oral and/or written comments of Petitioner, OP, the DOA, the County of Kaua`i, and a motion having been made at a meeting on February 8, 2013, in Līhu`e, Kaua`i, Hawai`i, and the motion having received the affirmative votes required by HAR §15-15-13 and HRS §205-45(e), and there being good cause for the motion,

HEREBY ORDERS that the Petition Area, consisting of approximately 11,026.2 acres of land, situated at Hā`upu and Līhu`e, Kaua`i, Hawai`i, Tax Map Key Nos. 2-8-01: 01 (por.); 2-8-02: 01 (por.); 3-4-01: 01 (por.), 02 (por.), 03 (por.); 3-4-05: 03 (por.), 04 (por.), and 13; 3-8-01: 01 (por.); and 3-8-02: 02 (por.), and shown approximately on Exhibit "1," attached hereto and incorporated by reference herein, shall be and is hereby designated as IAL as governed by HRS chapter 205.

IT IS FURTHER ORDERED that the designation of the Petition Area as IAL shall be subject to the following conditions:

1. Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in HRS §205-45(h) with respect to the Petition Area.
2. Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

ADOPTION OF ORDER

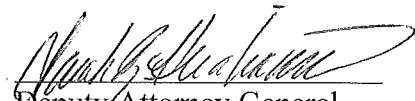
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

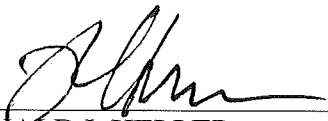
Done at Honolulu, Hawai'i, this 25th, day of FEB., 2013, per motion on February 8, 2013.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I


Deputy Attorney General

By 
RONALD I. HELLER
Acting Chairperson and Commissioner

Filed and effective on:

2-25-13

Certified by:


DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER** was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
CURTIS T. TABATA, ESQ. Matsubara-Kotake 888 Mililani Street, 8 th Floor Honolulu, Hawai'i 96813			X
MAUNA KEA TRASK, ESQ. Office of the County Attorney, County of Kauai 4444 Rice Street, Suite 220 Lihue, Hawai'i, 96766			X
MICHAEL A. DAHILIG Director of Planning 4444 Rice St. Suite 453 Lihue, Hawai'i, 96766		X	
RUSSELL S. KOKUBUN Chairperson State Department of Agriculture 1428 South King Street Honolulu, Hawai'i 96814-9613		X	

Dated: Honolulu, Hawai'i, 2/25 /13.



DANIEL ORODENKER
Executive Officer